HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE D.S.R.VARMA

WRIT PETITION No.11112 of 2007

Dated:14.08.2007

Between:
Boya Devanna

…Petitioner

And:
The Principal Secretary to Government,
General Administration Department,
Govt of A.P., Secretariat, Hyderabad
and another.

…Respondents

HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE D.S.R.VARMA

WRIT PETITION No.11112 of 2007

ORAL ORDER: **(per the Hon'ble Sri Justice D.S.R.Varma)**

Heard both sides.

2. This writ petition is filed challenging the order of detention, passed by the second respondent-The Collector and District Magistrate, Kurnool, vide Rc.No.C1/115/M/2007, dated 26.02.2007, under Sections 3 (1) and (2) of the Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land

Grabbers Act, 1986 (for short 'the Act') wherein and whereby one Boya Mukaiah (hereinafter referred to as "the detenu") was detained on the grounds that he was involved in Crime Nos.297/2004-05, dated 05.11.2004, 4/2006, dated 20.02.2006, 462/2005-06, dated 01.02.2006 and 441/2006-07, dated 04.12.2006, for the offence of carrying sachets of considerable quantity of illicit liquor from one place to the other, the samples were collected from the said sachets and were sent for chemical examination and, after analysis, it was found that the samples were diluted arrack unfit for human consumption and injurious to health.

3. It appears, pursuant to the opinion of the expert, the detenu was arrested and was subsequently released on bail, in all the cases, and the said cases are pending trial. As such, the detenu was brought within the definition of Boot Legger, as specified in Section 2 (b) of the Act.

4. It is further obvious from the impugned order that the material placed before the second respondent-the competent authority was enough for launching prosecution against the detenu under the Prohibition and Excise laws also for Boot Legging activities. After passing the impugned order of detention, under Sections 3 (1) and 3 (2) of the Act, eventually, the detenu was informed as follows: -

> **"1. You have a right to make a representation against this order of detention to the Collector & District Magistrate, Kurnool i.e., the detaining authority before conformation by the Government.**
> **2. You have a right to make representation against this order of detention to the Chief Secretary, Government of A.P., Hyderabad.**

> **3. You are further informed that the matter will be referred to advisory board within three weeks from the date of detention. However, you have a right to make representation in writing to the advisory board. You also have a right to be heard in person before the advisory board, when it is scheduled to meet to consider the matter."**

5. From a reading of the above, it is obvious, that the factum of arrest of the detenu, in connection with the aforesaid crimes, was placed on record, but his subsequent release on bail, in those cases, were not put on record. In other words, the said facts were neither brought to the notice of the detenu or the detaining authority nor there was any discussion about the said facts or their relevancy in the impugned order.

6. Now, the incidental question that falls for consideration, in this writ petition is, as to whether under the above said circumstances, the detenu is entitled to the relief sought for?

7. In this context, it has been brought to the notice of this Court that in ***ABDUL SATHAR IBRAHIM MANIK vs. UNION OF INDIA***[1], the apex Court had formulated six guidelines and the relevant guideline is No.6, for ready reference, the same is extracted hereunder:

> **"In a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case the bail application and the order granting bail should necessarily be placed before the authority and the copies should**

also be supplied to the detenu."

8. From the above, it has been absolutely made clear by the apex Court that when the detenu was released on bail and is at liberty at the time of passing of the order of detention, the detaining authority has to imperatively rely on such material placed before him, inasmuch as, the same would be an important ground for ordering any detention. It has been abundantly made clear that the order of detention be necessarily placed before the authority and copies of such order should be supplied to the detenu. In other words, the detenu must be kept in complete knowledge of all the events prior to the passing of the order of detention, including the order of bail, obtained by the detenu, and the same have to be taken into consideration before passing the order of detention, by the competent authority.

9. The reason for making this as an essentiality is obviously in the light of taking away the valuable right conferred upon the detenu, under Article 21 of the Constitution of India.

10. It is to be further noted that various Acts like the present one in addition to many Acts are already in force in the interest of public and, while exercising the powers under the Act, the same shall not be subjected to abuse and, inasmuch as, there is likelihood of the same being abused, several safeguards have been provided. In fact, only Section 8 of the Act deals with the procedure to be followed, but the same is not very exhaustive.

11. Nevertheless, when the right guaranteed under Article 21 of the Constitution of India is at peril, the apex

Court had intervened and formulated the guidelines. Even earlier to the decision cited supra, there were other decisions also, which need not be referred to, inasmuch as, they are not in any way in contravention of the view expressed by the apex Court in several cases, which arose out of totally different facts and circumstances, but one thing is conspicuous that from time to time by virtue of judicial intervention, the rights of individuals for these offences are being given new dimensions in order to protect any likelihood of abuse.

12. In this context, it is relevant to cite another judgment, by the apex Court, in ***SUNILA JAIN vs. UNION OF INDIA***[2]***,*** wherein it was observed that entire material need not be placed on record before passing the order of detention by the competent authority. The relevant material that is to be relied on for passing the order of detention alone has to be essentially put on record. Nevertheless, the order of bail, which is vital material, has to be taken into consideration by the competent authority before passing the order of detention.

13. From the above, it is clear that the apex Court, while reiterating the view expressed by it, in ***ABDUL SATHAR IBRAHIM MANIK'S*** case (1 supra) had explained the jurisdiction of competent authority while dealing with the matters of the present nature.

14. In the background of the above judgments and reverting to the instant case on record, it is to be seen that the factum of arrest and release of the detenu, in connection with all the cases, was neither referred to nor was taken into account by the competent authority, while

passing the impugned order.

15. In this context, it is to be remembered that while passing the impugned order, by virtue of the bail order, granted in his favour, in the aforesaid cases, the detenu was moving freely.

16. No special reasons were assigned by the competent authority to pass the impugned order regardless of the order of arrest and the order of bail in favour of the detenu.

17. If we put it in a slightly different way, even though the detenu was released on bail and was moving freely, the detaining authority is not precluded from exercising its jurisdiction conferred under Sections 3 (1) and 3 (2) of the Act to pass an order of detention by recording special reasons, but, not certainly by way of giving a goby to the established principles laid down by the apex Court, as referred to above.

18. The detaining authority shall take all such relevant material and the bail order, in particular, inasmuch as, it involves valuable rights of the citizens guaranteed under Article 21 of the Constitution of India, into consideration and pass appropriate orders notwithstanding the same for proper reasons and subject to its satisfaction.

19. Learned Assistant Government Pleader, representing learned Advocate General, appearing for the respondents, places reliance heavily on the judgment rendered by the apex Court in ***SUNILA JAIN'S*** case (2 supra). We do agree with the said contention of the

learned Assistant Government Pleader, but only subject to the facts and circumstances of each case and, in our considered view, the instant case is a fit case to be allowed for the above reasons, recorded by us.

20. For the foregoing, the impugned order is liable to be set aside.

21. In the result, the writ petition is allowed and the impugned order, dated 26.02.2007, passed by the second respondent-The District Collector and District Magistrate, Kurnool District, Kurnool, vide Rc.No.C1/115/M/2007 is set aside. The detenu by name Boya Mukaiah @ Masala Eeranna shall be released forthwith, if he is not required in any other case/crime. However, there shall be no order as to costs.

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B.PRAKASH RAO, J

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D.S.R.VARMA, J

14.08.2007
dr

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[1] (1992)1 SCC 1

[2] (2006) 3 SCC 321